

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

PACE-O-MATIC, INC.,	:	
	:	
Plaintiff,	:	
v.	:	Docket No. 1:20-cv-00292
	:	
ECKERT SEAMANS CHERIN &	:	
MELLOTT, LLC, MARK S. STEWART,	:	(Judge Jennifer P. Wilson)
and KEVIN M. SKJOLDAL,	:	
	:	
Defendants.	:	
	:	

**MOTION OF DEFENDANTS,
ECKERT SEAMANS CHERIN & MELLOTT, LLC,
MARK S. STEWART AND KEVIN M. SKJOLDAL, TO
DISMISS CLAIMS AND REQUEST FOR RELIEF FROM SECOND
AMENDED COMPLAINT OF PLAINTIFF, PACE-O-MATIC, INC.**

Defendant, Eckert Seamans Cherin & Mellott, LLC (“Eckert”), Mark S. Stewart and Kevin M. Skjoldal (collectively, “defendants”), by and through their counsel, Fox Rothschild LLP, hereby move the Court to dismiss claims and requests for relief from the Second Amended Complaint of plaintiff, Pace-O-Matic, Inc. (“POM”), pursuant to Federal Rule of Civil Procedure 12(b)(6). In support of their motion, defendants allege as follows:

1. This case involves allegations of a breach of fiduciary duty by POM against Eckert arising from legal positions asserted by Eckert on behalf of another Eckert client.

2. POM commenced this action by the filing of a Complaint on February 18, 2020 against Eckert only.

3. The original Complaint contained claims for declaratory judgment and breach of fiduciary duty against Eckert.

4. Eckert answered POM's Complaint on March 10, 2020.

5. On August 3, 2021, following leave of Court, POM filed an Amended Complaint that added a claim for fraud and claims for declaratory judgment and breach of fiduciary duty against the two individual defendants.

6. On August 27, 2021, defendants filed a partial motion to dismiss certain claims and requests for relief from POM's Amended Complaint, pursuant to Federal Rule of Civil Procedure 12(b)(6).

7. On March 31, 2022, the Court granted in part and denied in part defendants' partial motion to dismiss and dismissed portions of the declaratory judgment claim in Count I and the entirety of the fraud claim contained in Count III of the Amended Complaint.

8. On June 13, 2022, defendants answered POM's Amended Complaint.

9. On June 29, 2022, POM filed another motion for leave to file a Second Amended Complaint to re-plead its fraud claim, to add an abuse of process claim and to assert new requests for attorneys' fees as damages.

10. Defendants did not oppose POM's motion for leave.

11. On July 14, 2022, the Court granted POM leave to file a Second Amended Complaint.

12. On August 2, 2022, the Court docketed for filing POM's Second Amended Complaint.¹

13. Defendants now move to dismiss as moot Count I (declaratory judgment) of the Second Amended Complaint based upon the Court's entry of a Stipulated Order for a permanent injunction on January 27, 2022.

14. Further, defendants move to dismiss the re-pled Count III (fraud) and the new Count IV (abuse of process) of the Second Amended Complaint, as well as all requests for attorneys' fees, for failure to state a claim, pursuant to Federal Rule of Civil Procedure 12(b)(6).

15. Defendants will file their memorandum of law in support of this motion on August 30, 2022, consistent with Local Rule 7.5 of the Rules of the United States District Court for the Middle District of Pennsylvania.

¹ Following a telephone call to the Clerk of the Court, defendants understood that there was a problem with the PDF of the Second Amended Complaint that was attached to POM's motion for leave to file. As such, there was an unexpected delay in the docketing of the Second Amended Complaint following the Court's grant of POM's motion for leave to file on July 14, 2022. Defendants used the docketing date and receipt of the Court's e-mail serving the Second Amended Complaint on August 2, 2022 to calculate their response deadline to respond to the Second Amended Complaint.

WHEREFORE, defendants, Eckert Seamans Cherin & Mellott, LLC, Mark S. Stewart and Kevin M. Skjoldal, respectfully request that this Court enter their proposed form of Order and grant the motion to dismiss Counts I, III and IV, and all requests for attorneys' fees, from the Second Amended Complaint of plaintiff, Pace-O-Matic, Inc. for failure to state a claim.



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**Counsel for Defendants,
ECKERT SEAMANS CHERIN & MELLOTT,
LLC, MARK S. STEWART, and KEVIN M.
SKJOLDAL**

Date: August 16, 2022

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MELLOTT, LLC, MARK S. STEWART,	:	(Judge Jennifer P. Wilson)
and KEVIN M. SKJOLDAL,	:	
	:	
Defendants.	:	
	:	

CERTIFICATE OF NON-CONCURRENCE

I, Robert S. Tintner, Esquire, hereby certify that counsel for plaintiff does not concur with the relief sought in this motion.



ROBERT S. TINTNER, ESQUIRE

Dated: August 16, 2022

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and KEVIN M. SKJOLDAL,	:	
	:	
Defendants.	:	
	:	

CERTIFICATE OF SERVICE

I, Robert S. Tintner, Esquire, hereby certify that, on this 16th day of August, 2022, I served a true and correct copy of the foregoing Motion to Dismiss, via ECF, upon all counsel of record.



ROBERT S. TINTNER, ESQUIRE